

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7008 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ALEMBIC GLASS KARMACHARI UNION

Versus

REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE COR.

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Appearance:

MR NR SHAHANI for Petitioner

None present for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/07/97

ORAL JUDGEMENT

1. The matter was called out for hearing in the first round then in the second round and lastly, in the third round, but none put appearance for the respondents. Heard the learned counsel for the petitioner and perused the special civil application.

2. Alembic Glass Karmachari Union, through its General Secretary, filed this special civil application

and prayer has been made for directions to the respondent No.1 to ensure that the widows listed in Para No.2 are sanctioned and paid the Dependents' benefits/allowances within a period of one month by completing all formalities either directly or through their local office at Baroda. Further prayer has been made for direction to the respondent No.2 to constitute Medical Appeal Tribunal in the same manner as annexure 'C' within a period of one month. Only these two prayers have been pressed by the petitioner's counsel in the special civil application at this stage.

3. This special civil application has come up for admission before this Court on 18th May, 1994 and the order made by this Court reads as under:

1. Rule returnable on 15th June, 1994 before  
S.D. Shah, J.

2. In this case a grievance is made by the Union on behalf of 5 widows of 5 deceased workmen who have allegedly expired on account of occupational disease of "Silicosis". It is the case of the union that the five deceased workmen were being paid sickness allowance/benefits under the provisions of Employees' State Insurance Act. On their death because of the aforesaid occupational disease there widows are not being paid dependents' allowance/benefits which is required to be paid under section 52 of the said Act. Another grievance is made before this court that the State Govt. has failed to constitute Medical Appeal Tribunal which is required to be constituted. It is submitted that such a tribunal was constituted for a period of one year vide notification dated 27-2-92, and thereafter there is no tribunal in existence. In view of the aforesaid the petitioner-union has claimed certain interim directions from this court.

3. In the facts and circumstances of the case, it would be just and proper to direct the first respondent to make necessary enquiry for eligibility of five widows of the deceased workmen for grant of Dependents' allowance under the provisions of the said Act on or before 15-6-94 and if they are entitled to such claim to grant said relief to the widows whose names are mentioned on page 3 of the petition.

4. IInd respondent is also by way of interim

order directed to take necessary decision to constitute Medical Appeal Tribunal on or before the returnable date failing which appropriate direction shall have to be issued by this court. On the returnable date responsible officer of the Regional Director of ESIS is directed to remain present personally before this court at 11-00 a.m. DS permitted.

So the second respondent was directed by way of interim order to take necessary decision to constitute Medical Appeal Tribunal on or before 15th June, 1994. It is not in dispute that in pursuance of the direction of this Court, Medical Appeal Tribunal had been constituted but its term has come to end during the pendency of this special civil application.

4. The respondent No.1 in reply to the special civil application has taken an objection that this special civil application is not maintainable as the petitioner has recourse to the appropriate statutory remedy provided under sec.54A read with sec.75 of the Act, which specifically provides that if any question or dispute arises as to the right of any person to any benefit or any other matter, which is in dispute between the Corporation and the employee, in respect of any benefit payable under the Act, it may be decided by the Employees' Insurance Court under the Act. It has further been contended that the decision of the Employees' Insurance Court is further appealable.

5. Under sec.54A of the Act, right of appeal has been conferred to the affected employees to the Medical Appeal Tribunal or he may go straightaway to the Employees' Insurance Court.

6. The dispute pertains to five employees who have been mentioned in Para-2 of the special civil application. All these five employees have already died and their widows are making the claim through the petitioner-union.

7. In reply to the special civil application, the respondent No.1 has given out that in respect of employee at serial No.1 at Para-2, the Special Medical Board opined that the death of the workman was on account of perennial abscess with cardio toxic shock. In case of the workman at Sr. No.5, the Special Medical Board opined that his death was due to cerebral hemorrhage. So far as the workman at Sr. No.3 is concerned, the Special Medical Board opined that no evidence with regard to the

cause of death or any medical certificate is available on record to show that the death was due to Silicosis. In respect of two other workmen at Sr. Nos. 2 and 4, it has been stated that their cases are pending before the Special Medical Board and on receipt of the decision of the Special Medical Board their cases will be dealt with in accordance with law.

8. The petitioner has not controverted the facts stated by the respondent No.1 in the reply. The petitioner has not filed any rejoinder to the reply. So the aforesaid facts stated in the reply are to be accepted.

9. So, in respect of the two workmen there is a positive opinion of the Special Medical Board and regarding the third workman, in absence of any evidence or medical certificate, the Board has not given any opinion. So, this Court will not sit as an appellate authority on the decision of the Special Medical Board, and the reason is very obvious that it is an opinion of Board which consists of technical experts. However, the Act has taken the care of situation and the aggrieved person has been given a right of appeal to the Medical Appeal Tribunal to be constituted by the respondent No.2. The respondent No.1 has taken the objection also regarding the maintainability of the writ petition on the ground of availability of alternative remedy, but the Tribunal is not functioning. The respondent No.2 has not furnished any reason or ground not to continue the Tribunal which has been constituted by it in pursuance of the order of this Court dated 18th May, 1994. In absence of any reason or ground forthcoming from the respondent No.2, the discontinuation of Medical Appeal Tribunal by the respondent No.2 is absolutely arbitrary and unjustified. So far as the cases of other two workmen are concerned, the decision of the Special Medical Board has not been received by the respondent No.1. So it is at premature stage and even there is no question of any appeal.

10. So, the interest of justice will be met in case this special civil application is disposed of with the direction that the widows of the workmen listed at Sr. Nos.1, 3 and 5 in Para-2 of this special civil application shall file an appeal against the decision of the Special Medical Board before the Medical Appeal Tribunal within a period of one month from the date of receipt of certified copy of this order. It is made clear that the Medical Appeal Tribunal shall decide the appeal on merits and it shall not dismiss the appeals on

the ground of limitation.

11. So far as the cases of widows of workmen at Sr. Nos. 2 and 4 of Para-2 of the special civil application are concerned, in case in respect of these two workmen, the medical report is received by the respondent No.1, then it shall furnish copy of the same to the widows of the said workmen by registered post within a period of one month from the date of receipt of certified copy of this order and if the reports are adverse then they have a right to file the appeal within limitation prescribed. In case the Special Medical Board has not so far decided the matter in respect of these two workmen then it is hereby ordered that the Board shall decide the same within a period of one month and send copy of the same to the respondent No.1 for further communication of the same, where it is adverse, to the widows of the concerned workmen. The respondent No.1 is directed to send a copy of this order to the Special Medical Board in case that Board has not decided so far the cases of these two workmen. Otherwise the copy is not required to be sent. The respondent No.2 is directed to constitute Medical Appeal Tribunal as provided under the provisions of Employees' State Insurance Act, 1948 within a period of one month from the date of receipt of certified copy of this order. The widows of workmen at Sr. Nos.1, 3 and 5 shall send their appeals to the respondent No.2 within stipulated period as aforesaid on constitution of the Tribunal. The respondent No.2 shall forward the same to the Tribunal. The Special Civil Application and Rule therein stand disposed of in the aforesaid terms with no order as to costs.

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